

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

% **Date of Decision: 3rd July, 2017**

+ **CRL.M.C. 2679/2015 & CRL.M.A.9565/2015**

SHRI ADYA KATYANI SHAKTIPEETH MANDIR TRUST

..... Petitioner

Through: Mr.Mohit Mathur, Sr. Adv. with
Mr.Mritunjay Kr. Singh, Adv.

versus

STATE (GOVT OF NCT DELHI) &ORS

..... Respondent

Through: Mr.Izhar Ahmad, APP for State
Mr.Naresh Kumar, Adv. with
Mr.B.Tripathy and Mr.Randhir
Pandey, Advs.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I.S. MEHTA, J.

1. The instant petition is filed by the petitioner/Trust through its AR Mr. J.N. Purthy- Secretary of the petitioner/Trust under Section

482 Cr.P.C. for setting aside the impugned order dated 30.03.2015 passed by the learned ASJ/Special Judge (PC Act), CBI-3, South, Saket Court, New Delhi in criminal revision petition No. 03/15 titled as *Shree Adya Katyani Shaktipeeth Mandir Trust vs. The State & Ors* wherein the revision petition qua against the order dated 19.11.2014 under Section 145 Cr.P.C. passed by the Court of Sub-Divisional Magistrate (Saket), District-South, Govt. of NCT of Delhi, in case No. 034/SDM/2013 was dismissed.

2. The brief facts stated are that initially a complaint on 15.03.2007 was made by Shri Sumer Saini, Chief Security Officer, Chattarpur Mandir Trust, to the SHO Mehrauli alleging therein that a piece of land/plot in Khasra No. 61, Village Chattarpur, New Delhi was under the continuous possession of the petitioner/Trust and on the said plot the watchmans of the temple- Om Prakash, Pankaj Sahu and Santosh Kumar Sahu lived in the jhuggies with their families and on 15.03.2007, the said plot was illegally encroached upon by the respondents-(Nos. 2-5). An inquiry pertaining to the aforesaid complaint was carried out by the police and the police found a plot of about 704 yards there with some tin sheds. The photographs of the spot were taken and thereafter the respondents Mohd Ayub and Mohd Salim came forward and told the police officer that the said property is part of Khasra No. 61 and the entire Khasra No. 61 is the property of the Delhi Waqf Board which is about 24 bighas and this plot measuring 704 yards has been taken on rent by them from the Delhi Waqf Board to this effect they showed three separate rent deeds dated 06.02.2006. Both the parties were making their claims on the said

plot/property to be theirs. Subsequently, a Kalandra bearing DD No. 42B dated 21.03.2007 under Section 145 Cr.P.C. was submitted by the S.H.O. police station Mehrauli to the learned SDM, Saket. The learned SDM after going through the contents of the report submitted by the SHO and on being satisfied passed a preliminary order under Section 145(1) Cr.P.C. dated 13.03.2007. Thereafter, the learned SDM after examining all the contentions and records placed before him passed an order dated 19.11.2014 in case No. 034/SDM/SAKET/2013 wherein the respondent No.5 was found to be in possession of the said land forming part of Khasra No. 61, Village Chattarpur, New Delhi entitling him to retain such possession until ousted by due course of law.

3. Aggrieved from the order dated 19.11.2014 passed by the learned SDM the petitioner filed a criminal revision petition before the learned ASJ/Special Judge (PC Act):CBI-03, Saket Court, New Delhi and the learned ASJ dismissed the revision petition filed by the petitioner vide impugned order dated 30.03.2014 being devoid of merits.

Hence the present petition .

4. The learned Senior counsel for the petitioner has submitted that the learned SDM Court instead of deciding the factum of possession virtually decided the title itself. He further submitted that the order dated 22.11.2014 passed by the learned SDM Court was challenged in revision and the learned Sessions Court vide impugned order dated 30.03.2015 dismissed the revision petition of the petitioner.

5. The learned Senior counsel for the petitioner has further submitted that as per the order dated 19.11.2014 passed by the learned SDM after taking cognizance under Section 145(1) Cr.P.C. talks about the status quo being ordered on 13.04.2007 whereas, the order passed by the learned SDM on 13.04.2007 it does not talk about the maintaining of status quo ordered to the parties by the learned SDM. Further it reveals that the preliminary order under Section 145(1) Cr.P.C. is dated 13.04.2007 and the final order is dated 19.11.2014 which talks about several hearings given to the petitioner but the order sheet does not say so. Therefore, the order dated 19.11.2014 passed by the learned SDM is not in accordance with law and is liable to be set aside.
6. The learned Senior counsel for the petitioner has further submitted that the said property was in the possession of one Ranjit Singh Pradhan of Village Chattarpur at the relevant point of time since December 1969. The said property was never in the possession of the Wakf Board. He has further submitted that as per the document placed on record it shows that the property khasra no 61, Village Chattarpur, Tehsil Mehrauli, New Delhi was under the unauthorised possession of the aforesaid Ranjit Singh Pradhan. The document placed on record in the petition which is an agreement to sell is without legal sanctity as the tenant cannot sell the property as per the terms of the rent deeds placed on record by the petitioner and further at the relevant point of time the respondent was not in the possession of the disputed property which can be seen from the order dated dated 29.05.2015 that the respondent on 07.04.2015 has made a complaint

to the concerned SDM that he was not getting the possession of the said land that means at the relevant point of time the petitioner was in the possession of the said property as well as on the relevant point of time in year 2007 when the cause of action arose. The petitioner was in possession of the property since time immemorial till 08.06.2015 and on 08.06.2015 the possession of the said land was got vacated from the possession of the petitioner in compliance of the order dated 19.11.2014 passed by the learned SDM.

7. The learned Senior counsel for the petitioner has further submitted that the learned SDM on his presumption without application of mind took cognizance and without application of mind handed over the land/plot adjacent to Kabristan and also adjacent to Jain Mandir, Chattarpur, New Delhi forming part of Khasra No. 61, Village Chattarpur, New Delhi in favour of the respondent No.5/Mohd. Saleem S/o Shri Bundu Khan R.o 582/8D, Chattarpur Pahari, Delhi until he is ousted by due course of law which is bad, illegal and liable to be set aside and the subsequent order passed by the learned ASJ dated 30.03.2015 too is also liable to be set aside. The learned Senior counsel for the petitioner has relied upon the following judgments:-

- i. ***R.H. Bhutani vs. Miss Man J. Desai and Ors.; MANU/SC/0343/1968.***
- ii. ***Agni Kumar Dass vs. Mantazaddin; MANU/WB/0091/1928.***

8. The learned counsel for the respondents has submitted that the learned SDM has applied his mind and there is no irregularity and

illegality in the impugned order dated 30.03.2015 passed by the learned ASJ on the basis of the facts in Kalandra filed under Section 145 Cr.P.C. and on the basis of documents submitted showing actual physical possession of the respondents the learned SDM passed the order dated 19.11.2014 therefore, there is no infirmity in the order dated 19.11.2014 passed by the learned SDM.

9. The facts emerging from the record are that the SHO police station, Mehrauli, New Delhi on 21.03.2007 submitted a Kalandra No. 42B under Section 145 Cr.P.C. before the concerned SDM and the learned SDM took cognizance under Section 145(1) Cr.P.C. on 13.04.2007 and thereafter the learned SDM relying on the Kalandra filed under Section 145 Cr.P.C. and on the basis of documents placed on record passed an order dated 19.11.2014 in favour of the respondent No.5 entitling him to retain the possession of the land/plot adjacent to Kabristan and also adjacent to Jain Mandir, Chattarpur, New Delhi forming part of Khasra No. 61, Village Chattarpur, New Delhi until ousted by due course of law.

10. In the instant case, whether holding the respondent No.5 in possession of the land/plot adjacent to Kabristan and also adjacent to Jain Mandir, Chattarpur, New Delhi forming part of Khasra No. 61, Village Chattarpur, New Delhi passed by the learned SDM holds good in law and further entitling him to hold such possession of the aforesaid land until ousted by due course of law is correct?

The answer obviously is YES.

On the following reasons:-

11. In the present case the petitioner/Trust through the Chief

Security Officer had filed a complaints with the concerned police station dated 15.03.2007 qua against the respondents which is reproduced as under:-

To,
The SHO,
P.S. Mehrauli
New Delhi-74
Sir,

It is humbly submitted that behind Chattarpur Mandir, there is a plot, it is situated adjacent to the graveyard behind Chattarpur Mandir on which the Mandir is having possession fo the last (35) Thirty Five years. And in which a Watchman of the Mandir whose name is Om Prakash and there is another one whose name is Santosh Kumar and his brother Pankaj Kumar are living with their children. On this flat in the night of 14-15 March, 2007 at about 12-1 hours, a person named Saleem put a Board of Wakf on the gate of the plot and also constructed a small Jhuggi with tin sheet. This person named Saleem on the pretext of a party was providing food for 10-15 persons and under a well planned move forcibly took possession. This person even did not allow our men and their wives to come out from there and kept them confined in the Jhuggis so that they were not able to inform any person of the Mandir.

It is therefore, requested that the plot which is in possession of the Mandir may ne gor released from the illegal possession of said person. Amd take action in such a way that in future no one shoukd do such activity and that also may be kept in view. For your kindness we are thankful.

Thanking you

*Sd/-
Sumer Saini
15.03.07*

Chief Security Officer

15.03.07

12. The petitioner through the aforesaid complaint claims dispossession from the plot Khasra No. 61 on the intervening night of

14-15 March, 2007 and further claims that the petitioner's possession over the aforesaid plot was for more than 35 years. On the basis of the aforesaid complaint the factum of possession of the parties were verified by the IO Sub-Inspector Rajesh Brar which reveals that the respondents were found in the possession of the land/plot Khasra No. 61 which is in the ownership of the Delhi Wakf Board.

13. Thereafter, the SHO of the police station Mehrauli apprehending the breach of peace filed a Kalandra bearing DD No. 42B dated 21.03.2007 under Section 145 Cr.P.C. before the learned SDM, Saket and the learned SDM on 13.04.2007 passed the preliminary order under Section 145(1) Cr.P.C. which is reproduced as under:-

"Preliminary Order U/S 145 (1) Cr.P.C

A Kalandra bearing DD No. 42B dated 20.03.2007 under section 145 of Cr.P.C. has been submitted by the SHO (Mehrauli) before me reporting a dispute over the possession of land measuring 704 square yards near Muslim Grave Yard situated in Khasra No. 31, Ambedkar Colony, Chatterpur, New Delhi.

After going through the contents of the report submitted by the SHO (Mehrauli), I am satisfied that the dispute is likely to cause a breach of peace and therefore, I, Sushil Yadav, SDM (Hauz Khas), in exercise of power conferred upon me under section 145 (1) Cr.P.C., hereby pass this preliminary order and direct both the parties to appear in this court in person on by pleader on 04.05.2007 at 2:00 PM and file written statement of their respective claims as respects the fact of actual possession of the subject of dispute and further to put in document or to adduce evidence of such possession as they rely upon in support of such claim.

S.H.O. (Mehrauli) is directed to serve copy of this order

to both the parties.

*Given under my hand and seal of this court on this 13th
day of March, 2007*

Sd/-

13/4/07

**(SUSHIL YADAV)
SUB-DIVISIONAL MAGISTRATE
HAUZ KHAS"**

14. Thereafter, the learned SDM on the basis of the material documents available on record passed the final order dated 19.11.2015 wherein the claim of the respondent No.5 Mohd. Saleem being in the actual possession of the disputed property was found to be true and entitled him to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of their possession in the meantime.
15. The aforesaid order passed by the learned SDM was challenged by the petitioner by way of a criminal revision petition before the learned ASJ/Special Judge (PC Act):CBI-03, Saket Court, New Delhi and the learned ASJ affirmed the order passed by the learned SDM and dismissed the revision petition filed by the petitioner vide impugned order dated 30.03.2014 being devoid of merits.
16. In the instant petition the petitioner/Trust invokes the inherent powers of this Court under Section 482 Cr.P.C. for setting aside the impugned order dated 30.03.2015 having been passed without application of mind which is liable to be set aside.
17. The allegations alleged in the complaint dated 15.03.2007 was verified by the IO by visiting at the spot who on inquiry/verification

reaches to the conclusion that the respondent No.5 was in the possession of the aforesaid plot forming part of Khasra No. 61, Village Chattarpur, New Delhi and the ownership of the said land/plot was with the Delhi Wakf Board and the respondent No.5 was in possession of the said land/plot as a tenant. The plea of the complainant that the petitioner/Trust was in possession of the said plot forming part of Khasra No. 61 for the last 35 years and they were dispossessed on the intervening night of 14-15, March 2007 does not seem to be correct on the following grounds:-

- 1) It is an admitted case between the parties that the ownership of the plot forming part of Khasra No. 61, Village Chattarpur, New Delhi vests with the Delhi Wakf Board.
 - 2) The complainant in his complaint does not claim that the possession of the petitioner/Trust was through Ranjit Singh Pradhan as shown in the Revenue Records/Parcha Jamabandi for the year 1970 relied upon by the petitioner in the present petition.
18. As per the complaint the watchmen- Om Prakash, Santosh Kumar and his brother Pankaj Kumar were in the possession of the aforesaid plot forming part of Khasra No. 61 but nothing documentary or ocular evidence either in the inquiry or thereafter has come on record to suggest that they were dispossessed on the intervening night of 14-15, March 2007. Therefore, there is no convincing material evidence coming on the record to suggest that they were dispossessed by the respondents on the intervening night of 14-15, March 2007. On the contrary the plea taken by the respondents is that

respondent No.5 is a tenant of the plot bearing Khasra No. 61 whose ownership is with the Delhi Wakf Board.

19. The object of Section 145 Cr.P.C. is merely to prevent a breach of the peace by maintaining one or other of the parties in the possession, which the court finds they had immediately before the dispute, until the actual right of one of the parties has been determined by a civil court. Unfortunately, this Section is frequently mis-applied. Magistrates should be careful to see that the criminal courts are not used by the parties for the settlement of civil disputes or for manoeuvring for position for the purpose of subsequent civil litigation, or an easy way of getting possession of the property in dispute without going to the civil court or for driving the other side to the civil court to prove his title. Reliance is place on the judgment in the case *Ghulam Mustafa n vs. Mohd. Rafiq Mir; 1988 (1) Crimes 474,476 (J&K)*, *Virendra Kumar vs. State of U.P; 2003 CrLJ 2709* and *Shyam Sundri vs. District and Sessions Judge, Balha; 2003 (7) AIC 231*.

20. In view of the above discussions this Court finds no infirmity and perversity in the impugned order dated 30.03.2015. The contentions of the learned Senior counsel for the petitioner has no force and the judgments relied by him are not applicable in the facts and circumstance of the present case.

21. Consequently, the present petition is dismissed and the impugned order dated 30.03.2015 passed by the learned ASJ/Special Judge (PC Act), CBI-3, South, Saket Court, New Delhi in criminal revision petition No. 03/15 wherein the revision petition qua against

the orders dated 19.11.2014 under Section 145 Cr.P.C. passed by the Court of Sub-Divisional Magistrate (Saket), District-South, Govt. of NCT of Delhi, in case No. 034/SDM/2013 was dismissed does not warrant any interference under Section 482 Cr.P.C. by this Court.

22. One copy of this judgment be sent to the learned SDM, Mehrauli and also to the learned ASJ/Special Judge:CBI-03, Saket. All pending application(s) (if any) are disposed of accordingly. No order as to costs.

I.S.MEHTA, J

JULY 03, 2017/km



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