

August, 2016 directed that the respondent nos. 1 to 3, who are in possession of the land, which is subject matter of proceedings under section 145 of Cr.P.C., are not to be disturbed and they are to be protected. The present petitioner challenged that the said order in Criminal Revision No. 125 of 2016 before the learned Additional Sessions Judge, Thane, who by order dated 5th March, 2018 upheld the order passed by the Special Executive Magistrate and dismissed the Revision.

4. The learned counsel for the petitioner submitted that the order passed by the learned Additional Sessions Judge and the order passed by the Special Executive Magistrate are illegal. The learned Special Executive Magistrate has not taken into account that Section 145 of Cr.P.C. cannot be invoked otherwise than the maintaining of peace. No facts are brought on record that there is likelihood of peace. He submitted that the respondents cannot obtain the possession of the land on the pretext of filing proceedings under section 145 of Cr. P.C. He has submitted that the respondents should file civil suit to obtain possession and declaration of their ownership. The learned counsel has further submitted that the Civil Suit No. 484 of 2015 was filed by the

applicant for declaration and in the said Civil Suit, his application for interim injunction was rejected on 31st August, 2015, however, he has challenged the said order before the Higher Court and the matter is still pending. He has further submitted that the criminal proceedings under section 145 of Cr. P.C. was filed after the Civil suit was filed and that should have been entertained by the Criminal Court. In support of his submissions, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Jhummal alias Devandas vs. State of Madhya Pradesh & Ors.**, reported in AIR 1988 SC 1973.

5. The learned senior counsel for the respondent nos. 1 to 3, while opposing this Petition, has submitted that the open land is owned by respondent nos. 1 to 3. The respondent nos. 1 to 3 have breached the order of Special Executive Magistrate under section 145 of Cr.P.C. because they found that the petitioner was trying to take possession of the said open land by constructing a bamboo hut with plastic sheet. It is further submitted by the learned senior counsel that the said open plot is acquired by the National Highway and the acquisition notice is issued to the respondent nos. 1 to 3, being the owners and in possession of the

land. He further submitted that in the Civil Suit, the interim injunction is refused. He supported the orders passed by the learned Additional Sessions Judge and so also the Special Executive Magistrate, Thane.

6. Heard the submissions and perused both the orders.

7. In the case of **Jhummal alias Devandas** (*supra*), it is held that parallel proceedings should not be permitted to continue and in the event of a decree of the civil Court, the criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the Civil Court for interim orders such as injunction or appointment of Receiver. The Supreme Court has held that Section 145 is intended to provide a special remedy for the prevention of breach of peace arising out of a dispute relating to immovable property and the object of Section is to maintain the public peace and not to decide the dispute. The title, interest of the property is to be decided by the proper forum, i.e., Civil Court.

8. The submissions of the learned counsel for the petitioner that the respondent nos. 1 to 3 are trying to take possession under

the garb of filing proceedings under section 145 of Cr.P.C. and that is not appreciated by the Special Executive Magistrate and the learned Additional Sessions Judge. The Special Executive Magistrate has specifically mentioned that the petitioner is trying to take possession by constructing a temporary bamboo hut and as it was noticed by the respondent nos. 1 to 3 and so they moved before the Special Executive Magistrate by filing the Petition under section 145. Section 145 is for maintaining peace. Thus, the observation of the learned Special Executive Magistrate that there was threat or disturbance to the public peace by the act of the petitioner and possession of the respondents, then the learned Special Executive Magistrate has not committed any mistake by invoking the powers under section 145 of Cr. P.C. The learned Additional Sessions Judge has given correct reasoning in paragraph 7. So also it is mentioned that the dispute in respect of title and possession is pending before the Civil Court. No illegality is found in the order passed by the learned Additional Sessions Judge, Thane and hence the Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)