

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR. No. 2836 of 2013 (O&M)

Date of decision : 17.1.2018

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Prem Chand Jangra (now deceased) through
his representative Jai Pal Panchal

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rajesh Goyal, Advocate for the petitioner

Mr. Neeraj Poswal, Assistant Advocate General,
Haryana.

Mr. Ashok Aggarwal, Advocate for respondents No.
2 to 6.

...

H. S. Madaan, J.

This revision petition is directed against the order dated 6.8.2013 passed by Additional Sessions Judge, Kurukshetra, accepting the revision petition filed by respondents No. 2 to 8 and setting aside the order dated 20.6.2011 passed by Sub Divisional Magistrate, Thanesar.

Briefly stated, facts of the case are that SHO, Police Station, City Thanesar, has filed a Calendera under Section 145 Cr.P.C. in the Court of Sub Divisional Magistrate, Thanesar, on 18.6.2011 stating therein that there is a Vishavkarma Mandir Sabha, registered at Kurukshetra, in existence since the year 1978-79. In the election of the said Sabha, persons from Dhiman, Panchal, Ramgaria and Jangra

communities are elected to the post of President and other office bearers to manage the affairs of that institute. That Sabha was running a Vishavkarma High School also. However, differences arose between Subhash Dhiman, Sukhbir Dhiman, Ramesh Dhiman, Maidayal, Jai Bhagwan, Joginder Kumar Dhiman, Vir Dutt, Amar Singh Dhiman, Roshan Lal and Raj Kumar - the first party, as well as, Prem Chand Jhangra, Man Singh, Harcharan Singh, Jayant Panchal and Jaipal Panchal – the second party. On 4.5.2011, the first party had stolen the goods from the aforesaid institution and after taking illegal possession, locked the office of the institution, though the lock was opened on 5.6.2011, but no office bearer of the second party was allowed to go inside, rather threats of elimination were given if any person from second party entered the institution. The first party had deleted the name of Vishavkarma Mandir Sabha from the main gate of Vishavkarma Sabha replacing it with Dhiman Brahman Panchayat Sabha, Kurukshetra. A situation arose causing danger to life and property of the persons from second party, where the latter could commit any cognizable offence, though the persons from second party did not want to create any dispute. Though a meeting of all the four communities was called, but to no effect. Prem Chand Jangra, President of Vishavkarma Mandir Sabha, had filed a civil suit on 8.6.2011. Both the parties had instituted their rights for the temple and Dharmshala. Under the circumstances, there was apprehension of disturbance to the public peace and tranquillity, as well as, commission of cognizable offence. Therefore, a prayer was made that proceedings under Section 107/150 Cr.P.C. be initiated against both

the parties and a Receiver be appointed.

Learned SDM, Thanesar, after hearing both the parties and going through the evidence adduced by them, as well as, record, came to the following conclusion:-

“The arguments of both the parties have been heard and the record as well as evidence perused. From perusal of the record, it has been found that the property in dispute is a registered institution in which there is temple, Dharamshala and shops. From shops, the Institution is earning handsome income. On this Institution, both the parties are staking their claims and are bent upon to create dispute. At any time, any party can commit a cognizable offence due to which there can be breach of peace at the spot. Both the parties were given time to settle the matter but none is ready to settle the matter amicably. A dispute with regard to question of title between both the parties is still pending decision before the civil court. Thus, taking into consideration all the aforesaid documents, the property in dispute relating to Institution is hereby attached under Section 146 Cr.P.C. and after appointing Deputy Chief Executive Officer, Zila Parishad as Receiver, he is directed that after taking possession of the disputed property, proceedings be conducted in accordance with law. If the land is vacant then it is to be ensured that the land is leased in

open auction. If the shops have been constructed, then income from the shops be deposited in the government treasury subject to the condition that either of parties should not have stay in their favour from any competent court. The file be consigned to the record room.”

Feeling aggrieved, the first party filed a revision petition, which was disposed of by Additional Sessions Judge, Kurukshetra, vide judgment dated 6.8.2013, paragraph Nos. 10 to 13, which are relevant, are reproduced hereunder:-

“10. There is a dispute regarding possession of the property. It is Dhiman Brahman Panchayat Sabha who is owner of the suit property as is clear from the sale deed dated 15.6.1950. The mutation is also in favour of Dhiman Brahman Panchayat Sabha. Vishavkarma Mandir Sabha filed as suit for injunction in the Court of Ms. Harleen A. Sharma, the then learned Civil Judge (Junior Division), Kurukshetra on 9.6.2011. There is no injunction order from the Court. The petition under section 145 Code of Criminal Procedure 1973 was filed on 18.6.2011 and the impugned order was passed on 20.6.2011.

11. Section 145 of the Code of Code of Criminal Procedure 1973 provides as under:-

“(1) 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 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 respects the fact of actual possession of the subject of dispute. xxx xxxx xxxx xxx xxx xxxx xxxx
 xxxxxxxx xxxx xxxx xxxxxxxx xxxx xxxx

(4) The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he

may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1)".

12. The perusal of the above said provision makes it clear that the scope of proceeding under section 145 of the Code of Criminal Procedure 1973 is limited. The Court while dealing with the proceeding under Section 145 of the Code of Criminal Procedure 1973 is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession if any within two months prior to that date. The Court is not required to decide either title to the property or right of possession of the same.

13. It is also very clear that the written statement of the other party has to be taken and evidence has to be recorded by the learned Trial Court in order to decide the possession of spot of the dispute. The order in question was passed by the learned Magistrate without determining as to who had prima facie been in possession of the land in dispute. It appears that this order was an attempt to achieve indirectly which could not be achieved directly i.e. by filing of the civil suit.

14. In **Balwant Singh vs. State of Haryana 2012 (1) C.C. Cases 602 (P&H)**, there was a civil dispute in respect of suit property. Respondent had filed a civil suit for permanent injunction against the petitioners.

The order of civil court was challenged in appeal before the learned Sessions Judge and 'status quo' was ordered in respect of possession. The application was moved by the respondent before SHO during the pendency of the civil suit. The Hon'ble High Court of Punjab & Haryana quashed the proceeding under Section 145 of the Cr. P. C. 1973 and order of appointing receiver under section 146 of Code of Criminal Procedure 1973."

In this very judgment, case law has also been discussed, holding that Civil Court was already seized of the dispute between the parties regarding possession, when proceedings under Section 145 Cr.P.C. were initiated and Receiver was appointed, which is clearly an abuse of the process of law. Consequently, the revision was allowed and impugned order dated 20.6.2011 passed by SDM was set aside. Resultantly, petition under Section 145 Cr.P.C. was dismissed.

Feeling aggrieved, the instant petition has been filed by the second party. Notice thereof was given to the respondents.

Learned counsel for the respondents has referred to citation **Ashok Kumar vs. State of Uttarakhand and others 2013 (1) RCR (Criminal) 961** by Hon'ble Supreme Court of India, wherein it was observed that when there was dispute between the parties over possession of land, which was pending in civil court, Magistrate could not pass order of attachment and it was for the civil court to decide who was in possession. In **Gurmej Singh vs. State of Haryana and others 97 (2) Recent Criminal Cases 431**, a coordinate

Bench of this Court had observed that when a dispute was pending before the civil court, in as much as, application for ad interim injunction was pending, proceedings under Section 145 can well be quashed, since if there was an apprehension of breach of peace, the Executive Magistrate can take recourse to proceedings under Section 107 and 151 Cr.P.C.

In the written reply, filed on behalf of respondents No. 2 to 6, they have contended that petition has become infructuous because of possession of the disputed premises has been handed over by the Receiver to such respondents and others on 21.8.2013, in pursuance of the order dated 6.8.2013 passed by Additional Sessions Judge, Kurukshetra and order dated 19.8.2013 passed by SDO (Civil), Thanesar and further the petitioner had also instituted a civil suit No. 65 of 2013 against the answering respondents and others, filing an application for grant of ad interim injunction, which was dismissed by the civil court vide order dated 12.8.2013. Copies of relevant documents have been attached.

The State of Haryana has filed reply through DSP, HQ, Kurukshetra, contending therein that a written dasti complaint made by the petitioner addressed to Superintendent of Police, Kurukshetra, was received in Police Station City, Thanesar, District Kurukshetra, against respondents No. 2 to 8. then a Calendra was presented in the Court to avoid any untoward incident. Though the Calendra under Section 107 and 150 Cr.P.C. was prepared against both the parties to maintain peace, law and order , but there was tense between both the parties therefore on 18.6.2011 a Calandra under Section 145 cr.p.C.

was presented. The Sub Divisional Magistrate, Thanesar, District Kurukshetra appointed Deputy Chief Executive Officer, Zila Parishad, Kurukshetra as Receiver of the disputed property vide order dated 20.6.2011, who took possession thereof. However, Dhiman Braham Panchayat Sabha, Kurukshetra, had filed a revision petition in the Court of Sessions Judge, Kurukshetra, which was accepted by the Additional Sessions Judge, Kurukshetra, vide judgment dated 6.8.2013.

I have heard learned counsel for the parties, besides going through the record and I find that revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge or that the conclusion arrived at by the Courts below is perverse. This is not a case here. The impugned judgment passed by the Additional Sessions Judge, is well reasoned one, based upon proper appraisal and appreciation of evidence an correct interpretation of law. Therefore, I do not find any ground to interfere with the impugned judgment passed by the Additional Sessions Judge. The revision petition stands dismissed.

(H.S. Madaan)
Judge

17.1.2018

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No