

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1126 OF 2018

(ANANDRAO TULSIRAM MISAL & OTH...VS.. STATE OF MAH. THR. SDM UMRED & OTH.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri S.D.Malke, Advocate for Applicants.
 Ms Tajwar Khan, A.P.P. for Non-applicant No.1.
 Shri K.P.Sadavarte, Advocate for Non-applicant Nos. 2 to 5.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 05, 2019.

On 17th February 2014, an idol of Lord Shrikrishna came to be installed in a temple constructed on the land owned by Gavali Samaj Akhada. On 19th May 2014 an idol of Radha came to be installed adjacent to idol of Lord Shrikrishna by some other group to which the applicants belong. This gave rise to a dispute, and rival claims regarding ownership of the property in question arose. The matter was reported to police and after the necessary formalities were completed and the procedure was followed, the learned Sub-Divisional Magistrate passed an order on 2nd February 2015 directing that the idol of Radha be shifted to some other place by one of the members of the group of the applicants duly following the rituals and the idol of Radha be taken by the group of the applicants to their house. The learned Sub-Divisional Magistrate directed both the parties to execute bond of Rs.Five Thousand for maintaining peace and order. The applicants had challenged the above order before Sessions Court in criminal revision which is dismissed by the impugned judgment.

On 12th December 2018 when the matter was listed before this Court, Shri P.A. Markandeywar, Advocate had put in appearance for the non-applicant Nos. 2 to 5. It was suggested that the parties should try to work out the matter amicably and the matter was referred for mediation. The Co-ordinator, Mediation Centre has submitted report dated 10th January 2019 informing that the mediation has failed.

The only point argued on behalf of the applicants is that the Sub-Divisional Magistrate has no power to pass order of the nature as in the present case. According to the applicants, powers under Section 145 of the Code of Criminal Procedure can be exercised only if the dispute is concerned with any land or water or the boundaries thereof and as the present dispute is in respect of installation of an idol, the Sub-Divisional Magistrate could not have exercised powers under Section 145 of the Code of Criminal Procedure.

The submission cannot be accepted. Sub-section (2) of Section 145 of the Code of Criminal Procedure explains expression “land and water” and lays down that it includes building, markets, fisheries, crops or other products of the land and the rents and profits of any such property.

From the facts on record it is clear that the dispute is about the ownership of the property where the idols were installed. The record further shows that the procedure contemplated under sub-section (1) of Section 145 of the Code of Criminal Procedure was also followed and the learned Sub-Divisional Magistrate exercised the powers after being satisfied that the dispute which has arisen was likely to cause breach of peace.

In the above facts, it cannot be said that the learned Sub-Divisional Magistrate has committed any illegality or error of jurisdiction. The learned Sessions Judge has also examined the relevant aspects. I see no reason to interfere with the impugned order and judgment.

The criminal application is **dismissed**.

JUDGE

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