AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P.No.1270 of 2020

Ajay Singh Chandra, S/o. Satyanarayan, aged about 49 years, R/o. Village Jhalronda, Police Station Baradwar, Tehsil Sakti, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh through Police Station Baradwar, District Janjgir-Champa, Chhattisgarh
2. Sub-Divisional Officer, Sakti, District Janjgir-Champa, Chhattisgarh
3. Naveen Bansal, S/o. Suresh Kumar Agrawal, aged about 37 years,
4. Amit Bansal, S/o.Suresh Kumar Agrawal, aged about 35 years,

   Respondent No.3 & 4 are R/o. Friends Colony, Raigarh, Tehsil & District Raigarh, Chhattisgarh
5. Shyamsundar Sharma, S/o. Ramchandra Sharma, aged about 27 years, R/o. 105 G, Heights, Gajanandpuram, Kotra Road, Raigarh, Police Station Raigarh, Tehsil & District Raigarh
6. Gram Panchayat Jhalronda, through its Sarpanch, Gram Panchayat Jhalronda, Police Station Baradwar, Tehsil Sakti, District Janjgir-Champa, Chhattisgarh

---- Respondents

For Petitioner : Mr.Manoj Paranjape, Advocate
For Respondents No.1 and 2:
Mr.Ravi Bhagat, Dy.G.A.
For Respondents No.3 to 5:
Mr.Anoop Mazumdar, Advocate
For Respondent No.6: Mr.Deepak Kumar Singh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/12/2020

1. This petition under Section 482 of the CrPC is directed against the order dated 10.09.2020 passed by

the First Additional Sessions Judge, Sakti, in Criminal Revision No.07/2020, by which the learned revisional Court affirmed the order dated 13.07.2020 passed by the learned Sub-Divisional Magistrate, Sakti, by which proceeding under Section 145 (1) of the CrPC has been initiated on filing Ishtagasha by the jurisdictional police and order of attachment of the subject-property has been passed.

2. The dispute relates to the dolomite mines situated at village Jhalronda, Tahsil Jaijaipur, District Janjgir-Chamnpa in Khasra No.46/1, area 4.048 hectare, of which the lease is said to have been granted to the petitioner by the State Government w.e.f.2.8.2010 to 1.8.2030 for carrying out the mining activities. After eight years, the petitioner is said to have entered into an agreement with father of respondents No.3 and 4 on 18.5.2018, pursuant to which, some dispute arose between the petitioner and respondents No.3 & 4 which led to filing of police report by the jurisdictional police on 29.6.2020 and ultimately on 13.07.2020 the jurisdictional police submitted Ishtagasha No.01/20 for initiating proceeding under Section 145 of the CrPC to the Court of Sub-Divisional Magistrate, Sakti, District Janjgir-Champa. The learned Sub-Divisional Magistrate on the same day recorded in the order-sheet that an agreement has been entered into by the

petitioner and father of respondents No.3 and 4 on 23.5.2018 and there is dispute with regard to production, income and profits and there is an apprehension of breach of peace, pursuant to which, the learned SDM directed to register the case and also directed for passing of preliminary order and issuance of summons. The preliminary order under Section 145 of the CrPC was separately passed in cyclostyle proforma and directed the Station House Officer, Police Station Baradwar to comply with the order 13.7.2020 and to attach the subject property and give the subject land in Supurdnama to Sarpanch of Gram Panchayat, Jhalronda. The petitioner herein basically questioned both the orders passed under Section 145(1) of the CrPC and order directing attachment of the subject property before the revisional Court. The revisional Court dismissed the revision finding no merit, against which, this petition under Section 482 of the CrPC has been filed.

3. Mr.Manoj Paranjape, learned counsel for the petitioner confining his submission to question the order under Section 146 of the CrPC, would submit that no satisfaction in terms of Section 146(1) of the CrPC has been recorded by learned SDM. He would further submit that in fact, only order under Section 145 (1) of the CrPC was passed by learned SDM and on the

pretext of complying with the said order, warrant of attachment was issued as if there is order under Section 146 of the CrPC, whereas no order under Section 146 of the CrPC was passed after passing the order under Section 145(1) that it is the case of one of emergency, or he did not decide that none of the parties was in possession of the subject property or he has not recorded a finding that he is unable to satisfy as to which of them was in possession of the subject property, then also in the name of complying the order under Section 145 of the CrPC, the subject property was attached, which is liable to be set aside in view of decision of the Supreme Court in the matter of **Ashok Kumar v. State of Uttarakhand**[1].

4. On the other hand, Mr.Anoop Mazumdar, learned counsel for respondents No.3 to 5, would submit that the impugned order is strictly in accordance with law as satisfaction has been recorded by learned SDM in the order dated 13.7.2020. He would further submit that the petitioner has already sub-leased the subject property to father of respondents No.3 and 4 by irrecoverable power of attorney and gave the possession of the subject property, as such, no exception can be taken the order of the learned SDM, as such, the learned SDM is absolutely justified in

1 (2013) 3 SCC 366

attaching the property till the proceedings are finalized by filing the reply and affidavit, as such, the revisional Court is also justified in affirming the order of learned SDM, as such, the petition under Section 482 of the CrPC deserves to be dismissed.

5. Mr.Ravi Bhagat, learned Deputy Government Advocate appearing for respondents No.1 and 2/State, would support the impugned judgment.

6. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

7. The main dispute is with regard to attachment of the property under Section 146 (1) of the CrPC which states as under:-

> "**146. Power to attach subject of dispute and to appoint receiver.-**(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:
>
> Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute."

8. A careful perusal of the above-stated provision would

show that if the Magistrate at any time after passing of the order under sub-section (1) of Section 145 finds, firstly, that it is case of one of emergency, or secondly, he decides that none of the parties was in possession as is referred to in section 145 or thirdly, he is unable to satisfy himself as to which of them was in possession of the subject property, then he may pass an order of attaching the subject property until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof, as such, presence of either of three conditions precedent are necessary for invoking Section 146(1) of the CrPC and that too after making an order under Section 145(1) of the CrPC.

9. Section 146(1) of the CrPC was considered by their Lordships of the Supreme Court in the matter of **Ashok Kumar** (supra) in which it was held as under:-

> "9. The above order would indicate that the SDM has, in our view, wrongly invoked the powers under Section 146(1) CrPC. Under Section 146(1), a Magistrate can pass an order of attachment of the subject of dispute if it be a case of emergency, or if he decides that none of the parties was in such possession, or he cannot decide as to which of them was in possession. Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace and Section 146 cannot be separated from Section 145 CrPC. It can only be read in the context of Section 145 CrPC. If after the

> enquiry under Section 145 of the Code, the 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.
>
> 10. The ingredients necessary for passing an order under Section 145 (1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be material on record before the Magistrate when the submission of the parties is filed, documents produced or evidence adduced.
>
> 11. We find from this case that there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the appellant – Ashok Kumar, whether it is legal or not, is not for the SDM to decide."

10. Reverting to the facts of the present case in light of principle of law laid down and interpretation rendered by their Lordships of the Supreme Court in

the matter of **Ashok Kumar** (supra), it is quite vivid that on 13.7.2020 learned SDM held that there is likelihood of breach of peace and directed for registration of case and also directed for passing of preliminary order under Section 145(1) of the CrPC and issuance of summons which states as under:-

13/07/2020 पुलिस थाना बाराद्वार जिला जांजगीर चाम्पा (छ.ग.) द्वारा ईश्तगाशा कमांक 01/2020 धारा 145 जा0 फौ0 का प्रस्तुत किया है कि ग्राम झालरौंदा स्थित जमीन खसरा नं0 46/01 रकबा 4.048 है0 जमीन विवादित भूमि/माईन्स की जप्ती कार्यवाही हेतु ईश्तगाशा प्राप्त हुआ। ग्राम झालरौंदा निवासी वादी क. 01 अनावेदक अजय सिंह चन्द्रा ग्राम झालरौंदा में स्थित जमीन ख.नं. 46/1 रकबा 4.048 हेक्टेयर जमीन में 20 वर्ष की अवधि अर्थात् 01/08/30 तक के लिए डोलोमाइड खनिज उत्खनन पट्टा विधिवत शासन से प्राप्त होने पर माइनिंग के संचालन हेतु वादी नं0 2 के अनावेदकगण क. 01 नवीन बंसल क. 02 अमित बंसल क. 03 श्यामसुंदर शर्मा के साथ दिनांक 22.05.2018 को अनुबंध पत्र इकरारनामा तैयार कराकर साझेदारी फर्म तैयार किया गया। दिनांक 15.05.2018 को पार्टनरशिप डीड तैयार किया गया था। दोनों पक्ष इस माइंस के उत्पादन एवं लागत, खर्च, आमद पर से एक दूसरे के विरूद्ध आपसी मनमुटाव (कटुता) का वातावरण निर्मित हो चुका है। ऐसी स्थिति में दोनों पक्ष से पार्टी बंदी का माहौल बन रहा है एक दूसरे पर शक्ति प्रहार कर गंभीर मानवीय क्षति कर सकते हैं माइंस पर कब्जा करने की बात पर शांति भंग होने की संभावना है। धारा 145 जा.फौ. प्रक्रिया के तहत, आवेदन पेश है।

प्रकरण पंजीबद्ध हो।

थाना बाराद्वार को प्रांरभिक आदेश पारित कर उसके निष्पादन हेतु भेजा जावें।

उभयपक्ष को समंस जारी किया जावें।

मा.दि.
27/07/2020

सही/–
अनुविभागीय दण्डाधिकारी
सक्ती

Thereafter, in order to comply with the above-stated order, learned SDM passed the preliminary order in

printed proforma (page 76 of paper book). It is pertinent to mention here that the learned SDM in last paragraph has also directed for seizure of dolomite mines which states as under:-

न्यायालय अनुविभागीय दण्डाधिकारी सक्ती/जिला जांजगीर चांपा (छत्तीसगढ़)

प्रारंभिक आदेश

(अंतगत धारा 145 द.प्र.सं.)

सम्यक रूप से अभिलिखित आधारों पर मुझे यह प्रतित होने पर कि मेरी स्थानीय अधिकारिता के अंदर स्थित ग्राम **झालरौंदा** थाना **बाराद्वार** तहसील **सक्ती** जिला जांजगीर चांपा (छ.ग.) कि भूमि ख.नं. **46/1** रकबा **4.048 हेक्टेयर जमीन में डोलोमाईट माइन्स** रकबा .....

कुल ख.नं. **46/1** योग रकबा **4.048** को लेकर उसके कब्जे संबंध में दो पार्टियों में मध्य जो निम्न हैः–

पार्टी नं. 1 **अजय सिंह चन्द्रा पिता सत्यनारायण उम्र 49 वर्ष सा. झालरौंदा**

पार्टी नं. 2 **1/ नवीन बंसल पि0 सुरेश कुमार उम्र 37 वर्ष वगैरह फ्रेण्ड्स कॉलोनी**

2/ अमित बंसल पि0 सुरेश कुमार 3/ श्याम सुंदर शर्मा

के मध्य विवाद विद्मान है थाना प्रभारी **बाराद्वारा** ग्राम **बासलखैंडा** के रिपोर्ट से मुझे समाधान को गया है कि उक्त भूमि के कब्जे को लेकर परिशांति भंग हो जाना सम्भव्य है अतः उभय पक्षकारों से उपेक्षा की जाती है कि वे दिनांक **27/07/2020** को **11:00** बजे न्यायालय में स्वयं या जरिये अभिभाषक के हाजिर हो और विवाद के विषय वस्तु पर वास्तविक कब्जे के नियम के बारे में अपने दावे का लिखित कथन पेश करे

थानेदार उक्त आदेश कि प्रति संबंधित पक्षकारों को तामील करें, तथा एक प्रति विवादित **डोलोमाईट माइन्स की जप्ती कार्यवाही की अनुमति प्रदान की जाती है** या सार्वजनिक स्थल पर या सहज दृश्य जगह पर प्रकाशित करें

आज दिनांक 13/07/2020 मेरे हस्ताक्षर एवं न्यायालय की मुहर लगाकर जारी किया गया

दिनांक 13/07/2020

सही/–
अनुविभागीय दण्डाधिकारी
सक्ती

11. Thereafter in separately (page 77 of paper book) learned SDM issued warrant of attachment of subject property which states as under:-

न्यायालय अनुविभागीय दण्डाधिकारी सक्ती जिला जांजगीर चांपा (छत्तीसगढ़)

भूमि आदि के कब्जे के बारे में विवाद के मामले में कुर्की का वारंट

(अंतगत धारा 146 द.प्र.सं.)

171 क्र. क्यू/अ.वि.दण्डा./**2020** सक्ती दिनांक **13/07/2020**

प्रति,

थाना प्रभारी

पुलिस थाना **बाराद्वार**

जिला जांजगीर चांपा (छ.ग.)

संदर्भः– प्रारंभिक आदेश दिनांक **03/07/2020** के आदेश के पालन प्रतिवेदन हेतु

पक्षकार **अजय सिंह** बनाम **नवीन वगैरह** के प्रकरण में मुझे यह प्रतीत कराया गया है कि मेरी अधिकारिताओं की सीमाओं के अंदर स्थित ख.नं. **46/1, रकबा 4.048 हेक्टेयर** जिसमें परिशांति भंग होना संभाव्य हैं उक्त पक्षकारों से सम्यक रूप से अपेक्षा की गई है कि वे उक्त ख.नं. **46/1, रकबा 4.048 हेक्टेयर** पर वास्तविक कब्जे के बारे में लिखत कथन दिनांक **27/7/2020** को प्रस्तुत करे

इसलिए आपको प्राधिकृत किया जाता है कि अब आपसे अपेक्षा की जाती है कि आप **सरपंच ग्राम पंचा. झालरौंदा** को उसका कब्जा लेकर और रखकर कुर्क करे एवं किसी सक्षम योग्य व्यक्ति को सुपुर्दनामा में देकर इस वारंट के निष्पादन को पृष्ठांकन द्वारा प्रमाणित करते हुये उसे लौटा दें

दिनांक **13/07/2020**

अनुविभागीय दण्डाधिकारी
सक्ती

प्रतिः– पटवारी हल्का नं. ..... ग्राम **झालरौंदा** को थाना प्रभारी **बाराद्वार** को आवश्यक दस्तावेज सहित सहयोग करने हेतु उपस्थित रहने बाबत

सही/–
अनुविभागीय दण्डाधिकारी

12. A careful perusal of the above-stated orders would show that learned SDM has only passed an order under Section 145 of the CrPC on 13.7.2020 in order-sheet and directed for registration of case, passing of preliminary order and also directed for issuance of summons, but there is no order passed in terms of Section 146(1) of the CrPC either in the order dated 13.7.2020 or after making of the order under Section 145(1) of the CrPC holding enquiry (if any) that it is the case of emergency or recording satisfaction that none of the parties was in possession of the subject property or he did not record that he is unable to satisfy himself as to which of them was in possession of the subject property, but surprisingly while passing a preliminary order under Section 145 of the CrPC in cyclostyle proforma, one paragraph has been added for attachment of the subject property and directed the Station House Officer, Police Station Baradwar to comply with the order dated 13.7.2020 and to attach the subject property and give it to Sarpanch of Gram Panchayat Jhalronda, as such, though no order has been passed in the order-sheet invoking Section 146 of the CrPC, that too complying with the provisions contained in Section 146 (1) of the CrPC after passing the order under Section 145 of the CrPC,

yet by issuing memo in the shape of preliminary order (pages 76 and 77 of paper book), order for attaching the property and giving it in Supurdnama has been directed, which is absolutely contrary to law. Unless the order under Section 146 of the CrPc is passed after passing the order under Section 145(1) of the CrPC in specific term in order-sheet fulfilling the requirement of Section 146(1) of the CrPC, while directing compliance of order under Section 145 (1) of the CrPC, no property can be directed to be attached and to be given in Supurdnama. The order of attachment of subject-matter is not implicit in order under Section 145(1) of the CrPC and separate & specific order of attachment is required to be passed invoking and fulfilling the statutory requirement of Section 146(1) of the CrPC. While complying with the order dated 13.7.2020, only a preliminary order has been passed directing to register a case in line with Section 145(1) of the CrPC. Accordingly, the memo directing attaching the property to the Station House Officer by the learned SDM is ex-facie without jurisdiction and without authority of law and the learned revisional Court failed to notice the aforesaid illegality in the proceedings of the SDM.

13. Accordingly, order of the learned SDM to the extent of directing attachment of the property in its

preliminary order while directing to the Station House Officer, Police Station Baradwar on 13.7.2020 is hereby set-aside and the impugned order passed by the revisional Court is also set-aside. However, the proceeding under Section 145 (1) of the CrPC would continue. Since no order has been passed under Section 146 of the CrPC and no finding has been recorded by the SDM in line with that provision, this order will not bar the learned SDM to consider the question of invoking Section 146(1) of the CrPC in accordance with law at appropriate stage.

14. The CrMP is allowed to the extent indicated hereinabove. However, it is made clear that this order has been passed only to consider the validity and correctness of direction issued under Section 146 of the CrPC. This Court has not expressed any opinion on merits of the matter.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-