

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 146 of 2013

Reserved on 30.07.2021

Pronounced on 07.09.2021

1. Devnath S/o Kanhaiya Gond Aged About 25 Years, Occupation- Kastkar, R/o Harmo P.H. No. 36, Ps - Bhoramdev Rajanawagaon, Tah. - Bodla, Distt. Kabirdham C.G.
2. Budkunwar W/o Kanhaiya Gond Aged About 63 Years, Occupation- Kastkar, R/o Harmo P.H. No. 36, P.S. - Bhoramdev Rajanawagaon, Tah. - Bodla, Distt. Kabirdham C.G.

---- Petitioners

Versus

1. Narendra Gond S/o Bhaduram Gond Aged About 42 Years, Occupation- Kastkar, R/o Harmo P.H. No. 36, Ps - Rajanawagaon, Bhoramdev Tah. - Bodla, Distt. Kabirdham C.G.
2. State Of Chhattisgarh Through Distt. Magistrate, Kabirdham, Distt. Kabirdham C.G.

---- Respondents

For Petitioner	: Shri Awadh Tripathi, Advocate
For Respondent No.1	: Shri Aman Saxena, Advocate
For Respondent No.2/State	: Shri Vinod Tekam, P. L.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV ORDER

1. The petitioner have filed this CRMP challenging the order dated 24.01.2013 passed in Criminal Revision No.37/2012 by learned Additional Sessions Judge, District Kabirdham arising out of order dated 20.07.2011 passed in Criminal Case No.03/2011 by learned Sub-Divisional Magistrate Bodla, District- Kabirdham(C.G.).
2. The facts reflected from the records would reflect that In-charge Police Station- Bhoramdev, District- Kabirdham, has submitted Istgasha before the Sub-Divisional Magistrate, Bodla, District- Kabirdham which was registered as Istgasha No.01/2011 under Section 145 of Cr.P.C. contending that the petitioners have taken illegal possession of respondent Narendra Gond's land bearing Khasra No.107/4 Rakba 2.00 acres, crating dispute with regard to the possession of the land causing dispute and may also

breach of peace of nearby his area, therefore, Sub-Divisional Magistrate has registered the said Istgasha as Criminal Case No.3/11 and issued notice to the petitioner and respondent to submit their reply. In pursuance of the notice, the present petitioners have filed their reply contending that they are doing agricultural work on the land for the last 25 years and they are in possession of the land. It has also been contended that disputed land belongs to elder brother of her husband Bondhi Gond who has brought Dhukhan Bai as wife as per "Chudi Customs". The respondent Narendra Gond and his brother Surendra Gond are not sons of her husband's elder brother Bondhi Gond but in fact he is son of ex-husband of Dhukhan Bai. After death of her husband's elder brother Bondhi Gond and Kanhaiya Gond, her husband respondent Narendra Gond and his brother Surendra Gond have incorporated their names in revenue records, which is illegality as per law after death of elder brother of her husband Bondhi Gond and her husband Kanhaiya Gond, she is only the successor of property. There is dispute with regard to the property which is pending in the commissioner's Court, she is in possession of the land doing cultivation in the land for the last 25 years, therefore, the interruption in peaceful possession of the land by respondent is *per se* illegal.

3. It has also been contended by the petitioners that the respondent No.2 Narendra Gond has filed an application under Section 250 of the Land Revenue Code before the Tahsildar Court Kawardha which has already been dismissed and also submitted copy of the order dated 29.08.2005 passed by the Tahsildar and would submit that she be declared that she is in possession of the land in dispute.
4. Respondent No. 2 has not filed his reply. The petitioner No.2 examined herself Heera Singh, Kapil Das whereas the respondent has not examined any witness to substantiate his case. The witness examined by the petitioners have categorically deposed before the Sub-Divisional Magistrate that the petitioners are in possession of the land and they are doing agricultural

work for the last 25 years. The petitioner No.2 reiterated his averments made in the complaint whereas other witness Heera Singh has also stated that the petitioner No.2 is in possession of the land since long and similar statements were recorded by the witness Kapil Das.

5. The respondent has neither examined the witness nor cross-examined the witnesses of the petitioners, therefore, the learned Sub-Divisional Magistrate has closed the right of the petitioners and the respondent to lead further evidence as reflected in the order sheet dated 16.05.2012 thereafter, the learned Sub-Divisional Magistrate has directed the petitioners and respondent to submit their written submissions. The petitioners and respondent have submitted their written argument reiterating the stand taken by them and in their replies filed before the Sub-Divisional Magistrate.
6. The learned Sub-Divisional Magistrate vide its order dated 30.05.2012 relying upon the Istgasha submitted by the Police, passed the order that the respondent is in possession of the land therefore, he should not be removed without due process of law.
7. The petitioners have filed revision against the order dated 30.05.2012 before learned Additional Sessions Judge, Kabirdham mainly contending that the learned Sub-Judicial Magistrate has not relied upon the unrebutted statement of petitioners, thus committed material irregularity and illegality, it has been further contended that as per Section 145 of CrPC, it has to be seen that who is in possession of the land on the date of raising of the dispute or on the date of submission of report prior to 2 months from the date of taking cognizance of the Istgasha. The learned Sub-Divisional Magistrate has not examined these illegal aspects and has passed the order ignoring the provisions of Section 145 of CrPC therefore the orders suffers from illegality and deserves to be quashed by the Revisional Court. The revision was registered as Criminal Case No.37/12, the learned Revisional Court vide its order dated 24.01.2013 has dismissed the revision petition, these orders are

being challenged by the petitioners by filing this CRMP before this Court.

8. Before advertng to the merits of the case, it is expedient to examine the relevant provisions. The Section 145 of CrPC deals with the possession of land or water. The Section 145 of CrPC is extracted below:-

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.
2. For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.
3. A copy of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.
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 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).
5. Nothing in this section shall preclude any party so required to attend, or any other person interested,

from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under Sub-Section (1) shall be final.

6. (a) If the Magistrate decides that one of the parties was, or should under the proviso to Sub-Section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to Sub-Section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this Sub-Section shall be served and published in the manner laid down in Sub-Section (3).

7. When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.
8. If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.
9. The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.
10. Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107”

9. From bare perusal of Section 145 of CrPC, it is clear that while examining the case under Section 145 CrPC, the Sub-Divisional Magistrate has to examine the fact that who is in possession of the disputed land or water without reference to the merits or

claims of any of the parties to possess the disputed land or water. The section further provides that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within 2 months from the date on which the report of a police officer or other information was received by the Magistrate or after that date or 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).

10. The petitioner No. 2 has categorically stated in her evidence and other witnesses examined by the petitioners that the petitioners are doing agricultural work for the last 25 years and they are in possession of land, this statement was not subjected to cross-examined by the respondent. But, the learned Sub-Divisional Magistrate has relied upon the Istgasha submitted by the Police which is not sufficient material for recording of findings when all other relevant materials are available on record to establish the possession over the disputed land. Even from perusal of the Istgasha, it is not specifically clear that who is in possession of disputed land therefore, it is very much essential for the learned Sub-Divisional Magistrate to examine the evidence already brought on record. Thus, the Sub-Divisional Magistrate has committed irregularity in holding that the respondent in possession of the land.

11. Hon'ble the Supreme Court in case of **Shanti Kumar Panda vs Shakuntala Devi**¹, has examined provisions of Section 145 of CrPC and held as under:-

“10. Possession is nine points in law. One purpose of the enforcement of the laws is to maintain peace and order in society. The disputes relating to property should be settled in a civilized manner by having recourse to law and not by taking the law in own hands by members of society. A dispute relating to any land etc. as defined in sub-section (2) of Section 145 having arisen, causing a likelihood of a breach of the peace, Section 145 of the Code authorizes the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The proceedings under Sections 145/146 of

1 2004 (1) SCC 438

the Code have been held to be quasi-civil, quasi-criminal in nature or an executive or police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in proviso to sub-section (4) of Section 145, and maintain the status quo as to possession until the entitlement to possession was determined by a court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned.

18. In *Jhummal Vs. State of Madhya Pradesh*, (1988) 4 SCC 452, this Court has held that a concluded order under Section 145, Cr.P.C., made by the Magistrate of competent jurisdiction should not be set at naught merely because the unsuccessful party has approached the civil Court. An order made under Section 145, Cr.P.C., deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil Court. The unsuccessful party therefore must get relief only in the civil Court. He may move the civil court with a properly constituted suit. He may file a suit for declaration and prove a better right to possession. The civil Court has jurisdiction to give a finding different from that which the Magistrate has reached. Here again we may hasten to add that the expression 'civil court' used by this Court in *Jhummal's* case (supra) means competent court and not necessarily a civil court as commonly understood.
21. The order of the magistrate under Section 145/146 of the Code is not only an order passed by Criminal Court but is also one based on summary enquiry. The competent Court in any subsequent proceedings is free to arrive at its own findings based on the evidence adduced before it on all the issues arising for decision before it. At the stage of judgment by Civil Court the order of the magistrate shall be of almost no relevance except for the purpose of showing that an enquiry held by the magistrate had resulted into the given declaration being made on a particular date. The competent Court would be free to record its own findings based on the material before it even on the question of possession which may be inconsistent with or contrary to the findings arrived at by the magistrate."

12. Thereafter, learned Additional Sessions Judge Kawardha has

committed further irregularity and illegality in rejecting the revision by passing a non-speaking order without considering the grounds raised by the petitioners in the revision petition, considering the provisions of Section 145 of CrPC. As such, order passed by the learned Additional Sessions Judge suffers from non-application of mind in violation of principle of natural justice as assigning of reason is also integral part of natural justice. The Hon'ble Supreme Court has consistently taken the view that recording of reason is an essential feature of dispensation of justice as a litigant who approaches the Court with any grievances in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the sole of order. The Hon'ble Supreme Court in Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla & brothers reported in (2010) 4 SCC 785, has held as under:-

10. The increasing institution of cases in all Courts in India and its resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in Courts, in our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher Court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.

11. The Supreme Court in the case of S.N. Mukherjee v. Union of India [(1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". To enable the Courts to exercise the power of review in consonance with settled principles, the authorities are advised of the considerations underlining the action under review. This

Court with approval stated:-

"the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."

12. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastise. Thus, it will not be far from absolute principle of law that the Courts should record reasons for its conclusions to enable the appellate or higher Courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing.

13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such

rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.

13. Since, the order of Revisional Court is without assigning any reason, as such, it is in violation of principle of natural justice and on law as held by the Hon'ble Supreme Court, the order of Additional Sessions Judge is illegal and the same is liable to be and is hereby quashed.
14. Consequently, the order passed by the Sub-Divisional Magistrate order dated 30.05.2012 in Criminal Case No. 03/2011 and order of Revisional Court dated 24.01.2013 in Criminal Case No. 37/2012 are quashed. The matter is remitted back to the Sub-Divisional Magistrate to give an opportunity to the petitioners or to respondent to examine and cross-examine their witnesses. The learned Sub-Divisional Magistrate is directed to expedite the trial and will conclude the trial within outer limit of 6 months from the date of receipt of copy of this order.
15. The record of the Sub-Divisional Magistrate, Bodla as well as record of Revisional Court, Kabirdham are remitted back to the concerned Courts.
16. With this observation, the present CRMP is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge

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