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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 28.10.2021

Order Passed on : 17/12/2021

CR.M.P. No. 898 of 2018

Nimish Agrawal, S/o. Shri Sunil Agrawal, aged about 37 years, R/o. 1/45, Nehru Nagar (East), P.S.- Supela, Bhilai, District- Durg, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh, Through- Station House Incharge, Police Station Bhilai Bhatti, Bhilai, District- Durg, Chhattisgarh.
2. The Sub Divisional Magistrate, Bhilai Nagar, District- Durg, Chhattisgarh.
3. (Inder Kumar Suri) Deleted As Per Honble Court Order Dated 02-09-2021
4. Alok Suri, S/o. Shri Inder Kumar Suri, aged about 28 years, R/o- C-1/25, Junwani, Chauhan Town, P.S.- Supela, Bhilai, District- Durg, Chhattisgarh.

---- Respondents

For Petitioner : Mr. B.P. Sharma, Advocate with
Mr. Manay Nath Thakur, Advocate

For Respondents/State No.1 & 2: Mr. Rahul Jha, Govt. Advocate

For Respondent No.4 : Ms. Sharmila Singhai, Sr. Advocate with
Mr. Kanwaljeet Singh Saini, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

1. This petition under Section 482 of Cr.P.C. has been brought with prayer to quash the entire proceeding in Case No. 87 of 2017, pending before the respondent No.2, which has been initiated under Section 145 of Cr.P.C.

2. It is submitted by the learned counsel for the petitioner that the impugned proceeding against the petitioner is totally unlawful and baseless. There is no ingredients present in the case to proceed against the petitioner under the provision of Section 145 of Cr.P.C. The dispute is regarding a shop, situated at Civic Centre, Bhilai, which was initially allotted to late Laxmi Narayan Agrawal. Later on after the family arrangements, the shop was allotted to Anil Agrawal, who in turn has handed over the shop to Mr. Inder Kumar Suri under the power of attorney. Respondent No.4, who is the son of Inder Kumar Suri has been unable to take possession of the shop in question as the petitioner and Sunil Agrawal have raised dispute, on this basis, the proceeding was initiated under Section 145 of Cr.P.C.
3. It is submitted by the learned counsel for the petitioner that there is already a civil dispute present between the petitioner and the Anil Agrawal regarding which, civil suit No.63-A/2016 has been filed praying relief of declaration regarding entitlement for the possession of the shop in dispute and for the permanent injunction to protect the possession of the petitioner. The defendants No.1 in that suit preferred an application under Order 7 Rule 11 of C.P.C.. The trial Court allowed the application and returned the plaint for presentation, before the proper Court under the provisions of Section 7 Rule 10 (2) of C.P.C.. The petitioner has preferred an appeal against that order, which is pending. It is submitted that Inder Kumar Suri, to whom the shop has been transferred by Anil Agrawal has submitted affidavit, before the respondent No.2, S.D.O. making a statement that shop No.7 has been sold by Anil Agrawal to respondent No.4 on 14.03.2016, in which the petitioner and his father Sunil Agrawal both are raising dispute because of which, one FIR has been lodged

against the petitioner and his father in Police Station- Kotwali for offence under Section 294, 323, 506 B of the Indian Penal Code. Similar statements have been made on affidavit by the respondent No.4. The petitioner has also submitted affidavit contesting the claim of the respondent No.4 and Inder Kumar Suri. The petitioner and his father has preferred a revision No.87 of 2017 against the initiation of proceeding under Section 145 of Cr.P.C., before the Court of Additional Sessions Judge, Durg, which has been dismissed by order dated 27.06.2017. It is submitted that according to the agreement of license for the shop, which is filed by the respondent No.3 and 4 as Annexure R-3-1, the license was granted by Steel Authority of India to Anil Kumar Agrawal and Sunil Kumar Agrawal. There is clear condition under Clause 22 of the agreement that licensee is not empowered to sublet the plot/shop nor enter into partnership with any other person. Neither he can assign or transfer the ownership or possession of the shop or the shop. Hence, on this basis, the respondent No.3 and 4 never had any entitlement over the shop on the basis of the transaction between them and Anil Kumar Agrawal.

4. It is submitted that Section 56 of the Easement Act, 1882 also provides that the license can not be transferred unless there is clear and express or implied intention present in the agreement. The agreement for transfer/sale between Anil Agrawal and respondent No.4, which is filed as Annexure R-3-3 is unlawful and against the terms of license agreement. Reliance has been placed on the judgment of Supreme Court in **Suraj Lamp And Industries Private Limited Through Director Vs. State of Haryana & Another**, reported in **(2009) 7 SCC 363** on the point of invalidity of the sale agreement. Reliance has also been placed on the judgment of

Supreme Court in the second case of **Suraj Lamp And Industries Private Limited (2) Through Director Vs. State of Haryana & Another**, reported in **(2012) 1 SCC 656** on this ground that the agreement of sale does not transfer any title to the respondent No.4. Further reliance has been placed on the judgment of Supreme Court in the case of **Maria Margarida Sequeira Fernandes & Others Vs. Erasmo Jack De Sequeira (dead) Through L.RS.**, reported in **(2012) 5 SCC 370**, in which it has been held that a suit by caretaker praying for injunction against owner of the title holder of the property is not maintainable. It is submitted that the petitioner is in possession of the disputed property and the dispute that is present can be decided only by the Civil Court, therefore, the proceeding under Section 145 of Cr.P.C. are not maintainable, which is liable to be quashed.

5. Learned State counsel on behalf of the respondents No.1 and 2 opposes the submissions, submitting that Istagasa submitted before the respondent No.2 under Section 145 of Cr.P.C. is the correct procedure under the circumstances at present. Three preliminary orders were passed subsequent to which, the proceeding is standstill in which no final order has been passed till today. However, the plaint of the civil suit filed by the petitioner has been returned, therefore, there is no civil litigation in existence. Therefore, the proceeding under Section 145 of Cr.P.C. is maintainable and that can not be interfered with by this Court. Placing reliance on the judgment of Supreme Court in case of **Jhummal @ Devandas Vs. State of M.P. & Ors.**, reported in **(1988) 4 SCC 452**, in which it has been held that any order passed under Section 145 of Cr.P.C. can not be declared to be nullity only for the reason that unsuccessful party has

approached the Civil suit. Therefore, the proceeding under Section 145 of Cr.P.C. is maintainable. Hence, this petition be dismissed.

6. Learned Sr. counsel appearing on behalf of the respondent No.4 vehemently opposes the submissions made by the learned counsel for the petitioner and submits that there is no civil litigation present. The plaint of the civil suit filed by the petitioner has been returned under Order 7 Rule 10 (2) of C.P.C. by order of the Civil Court dated 17.04.2017. Miscellaneous appeal No.21/2017, preferred against this order has been disposed off by order dated 10.05.2018, by which, the appeal was dismissed and the order of the trial Court was confirmed. The petitioner has challenged the initiation of the proceeding under Section 145 of Cr.P.C. in the revision petition No. 87 of 2017, in which, also has remained unsuccessful. The petitioner has applied for the allotment of the disputed shop and has filed application before the respondent No.1 for the allotment of shop, which is under consideration. Further the petitioner has participated in the proceeding before the respondent No.2 and as there is no civil litigation proceeding, therefore, the only issue present is of possession, which can be determined only under the provisions of Section 145 of Cr.P.C. Reliance has been placed on the judgment in case of **Shanti Kumar Panda Vs. Shakuntala Devi** ,reported in **(2004) 1 SCC 438** and it is submitted that the dispute regarding possession present between the parties is determinable only under the provisions under Section 145 of Cr.P.C.. Reliance has also been placed on the judgment of Supreme Court in case of **Rajpati Vs. Bachan & Another**, reported in **(1980) 4 SCC 116** and on the judgment passed by this Court in **Cr.R. No.532 of 218** between **Rekhlal & Ors. Vs. Dharmendra Kumar and one another**, decided

on **27.09.2019**.

7. I have heard the learned counsel for the parties and perused the documents placed on record filed alongwith the petition and the reply filed by the respondents side.
8. Section 145 of Cr.P.C. is relevant, which is as follows :-

“145. Procedure where dispute concerning land or water is likely to cause breach of peace. (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 this 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 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).

(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 subsection (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. Sub-section (1) of Section 145 of Cr.P.C. empowers the Executive Magistrate to entertain the proceeding on the basis of the information received from a police officer or any other person regarding dispute of any actual possession. Sub-section (2) describes the property. Under Sub-section (3) describes procedure. Under sub-section 4 of Section 145 of Cr.P.C., the Executive Magistrate is empowered to decide the dispute on merits on the basis of the statement made by receiving evidence and giving parties opportunity of hearing to decide as to who is in possession on the date of the order. The proviso to this sub-section authorizes the Magistrate to hold as to which of the

parties, has been dispossessed within two months, before the report was made.

10. The main purpose of exercise of powers by the Executive Magistrate under Section 145 of Cr.P.C. is to determine the possession of one of the party. The limitation placed in proviso to Section 145 (4) is this that Executive Magistrate can hold that a party in possession has been dispossessed within two months prior to the date of information received. In case, dispossession is beyond two months, then the authority of Executive Magistrate comes to an end and the authority of the Civil Court is initiated. Therefore, what is the factual position that has been determined on the basis of the other material brought by the parties in this petition. In the copy of Istagasa Annexure P-3, the SHO of Police Station – Bhilai Nagar has alleged that, as the shop has been transferred to the respondent No.4 and whenever respondent No.4 makes attempts to take possession of the shop, the petitioner and his father both raise dispute for the same. The preliminary order dated 18.04.2017 (Annexure P-4) mentions similarly that the petitioner and his father are raising dispute whenever respondent No.4 has approached to take possession of the shop. However, in the statement submitted by Inder Kumar Suri and respondent No.4, it is stated that the possession was received by them on 14.03.2016, which is date earlier to the date of Istagasa dated 11.04.2017. This Court will not make appreciation of the evidence and draw any conclusion regarding the possession of one of the parties or regarding dispossession of the parties within two months prior to the date the information was received by the respondent No.2, therefore, it is the jurisdiction of the respondent No.2 to enquire and determine has to who is the party, who shall be

treated in possession in accordance with the provisions under Section 145 (4) of Cr.P.C. Both the parties have made rivals claims regarding their possession, hence, it is the question of fact, which can be determined only after the enquiry is made in accordance with the provisions under Section 145 of Cr.P.C. The claim for entitlement to continue in possession by the petitioner side and that the petitioner is the person, who can be treated as person in possession as per proviso to Section 145 (2) is also subject to determination by the respondent No.2. Therefore, this Court is of the view that the satisfaction has been drawn by the respondent No.2 regarding a dispute present between the parties and that there is necessity of making an enquiry is a proper conclusion drawn, therefore, I do not find any illegality in the proceeding initiated by the respondent No.2 under Section 145 of Cr.P.C.

11. In view of the forgoing discussions made here-in-above, this petition is without any substance, which is dismissed and disposed off accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge