

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****Criminal Revision No. 439 of 2021**

Smt. Badrika Devi Jayswal, W/o. Shri Shivdayal Jayswal, aged about 60 years,
R/o. Near SECL Hospital Bankimongara, P.S. - Bankimongara, Distt. Korba
(C.G.)

---- Petitioner

Versus

1. Smt. Nandeshwari Sahu, W/o. Shri Bhagwat Sahu, aged about 40 years,
R/o. House No. 351, 352, Shakti Chowk, Near SECL Hospital, Bankimongara,
P.S. - Bankimongara, Distt:- Korba (C.G.)

2. State of Chhattisgarh, through the District Magistrate Korba, Distt. - Korba
(C.G.)

3. Station House Officer, Police Station Bankimongara, Distt. - Korba (C.G.)

----Respondents

For Petitioner	:	Mr. Sunil Sahu, Advocate.
For Respondent No. 1	:	Mr. Anshul Tiwari, Advocate.
For Respondents No. 2 & 3	:	Mr. Devesh Verma, Govt. Advocate.

Hon'ble Shri Justice N.K. Chandravanshi

Order On Board

23.08.2021

(1) This revision petition has been preferred against the impugned order dated 06.04.2021 passed by Additional Sessions Judge (FTC), Korba, Distt. Korba in Criminal Revision No. 04/2021, whereby preliminary order dated 15.01.2021 passed by Sub Divisional Magistrate, Katghora, District Korba in Criminal Case No. 11/2021 was set aside and the case was remitted to the SDM, Katghora, District Korba with a direction to pass reasoned order by following procedure prescribed under Section 145 of the Code of Criminal Procedure, 1973 (henceforth "Code").

(2) Learned counsel for the applicant would submit that order dated 15.1.2021 passed by SDM, Katghora, District Korba in Criminal Case No. 11/2021 was preliminary order, therefore, it could not be remitted by learned Additional Session Judge (FTC), Korba in view of the provisions contained in Section 398 of the Code. He would further submit that the order passed by SDM, Katghora, District Korba, in a proceeding under Section 145 (1) of the Code, has been set aside by learned Additional Sessions Judge (FTC), Korba without recording any legal finding with regard to question of possession of either of the parties, therefore, impugned order is erroneous, perverse and unsustainable in law and the same is liable to be set aside.

(3) Learned counsel for Respondent No. 1 would submit that SDM, Katghora, District Korba has passed the preliminary order dated 15.1.2021 under a proceeding of Section 145 of the Code but the SDM has not mentioned in his order that on what basis, he has given a finding that subject property is in possession of applicant – Smt. Badrika Devi and she cannot be dispossessed without following the due process of law.

(4) Learned counsel for the Stated opposes the submissions made by counsel for the applicant.

(5) I have heard learned counsel appearing for the parties and perused the material available on record.

(6) Order dated 15.1.2021 was passed by SDM, Katghora, District Korba in a proceeding under Section 145 (1) of the Code, filed by police of Police Station – Bankimongara stating that dispute arose between applicant and non-applicant No. 1 in respect of subject property, which may likely to cause breach of peace.

(7) At this stage, it would be appropriate to notice the relevant provisions contained in Section 145 of the Code, which reads as under :-

“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) xxx xxx xxx

(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 xxx xxx xxx

(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) xxx xxx xxx

(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)	xxx	xxx	xxx
(7)	xxx	xxx	xxx
(8)	xxx	xxx	xxx
(9)	xxx	xxx	xxx
(10)	xxx	xxx	xxx

(8) In light of the aforesaid provision of Section 145 of the Code, if order passed by Sub Divisional Magistrate, Katghora, District Korba is seen, then it is clear that the said order is preliminary order whereas provisions of Section 145 of the Code nowhere provide that Magistrate will pass such type of preliminary order, but the aforesaid provisions shows that after perusal of statements, hearing of the parties, considering all the evidence, Magistrate will decide that which of the parties was in possession over the subject property on the date of order passed by him under sub-Section (1) and by following the procedure of sub-Section 4, he shall issue an order under sub-Section 6(a) declaring such party to be entitled to possession on that property and also declare that he shall not be evicted therefrom without following due process of law and also provide possession on the property to the person, who is found to the entitled, *but* in this case learned Sub Divisional Magistrate, Katghora, District Korba without assigning any reason that on what basis, he found that claim of possession of applicant- Smt. Badrika Devi Jayswal is true, has given such a finding and also has declared that she shall not be dispossessed without due process of law. These facts show that order passed by SDM, Katghora, District Korba is non-speaking and unreasoned order, and

also an order under sub-Section 6 of Section 145 of the Code has been passed in the garb of preliminary order, whereas passing of such type of preliminary order has not been provided in the provisions of Section 145 of the Code.

(9) There is no infirmity or illegality in the impugned order, therefore, it does call for any interference of this Court.

(10) As a fallout and consequence of the above-stated discussion, the criminal revision, being without substance, is liable to be and is hereby dismissed.

Sd/-
(N.K.Chandravanshi)
Judge

D/-

